

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

procurement of a new voting system for Philadelphia through my role as Procurement Commissioner.

Background to the Acquisition of a New Voting System

3. During 2018, Pennsylvania Governor Tom Wolf and the Department of State repeatedly urged counties to acquire new voting equipment that would provide a “paper record” of votes cast. *See, e.g.*, February 9, 2018 Statement, *available at* <https://www.governor.pa.gov/newsroom/governor-wolf-statement-directive-new-voting-machines-paper-record/>; April 2, 2018 Statement, *available at* <https://www.media.pa.gov/Pages/State-Details.aspx?newsid=276>.
4. Although the City and Board had been working towards acquiring a new voting system in or around 2022, by early 2018 it was clear that this timeline should be accelerated to acquire a system that could be used no later than the November 2019 General Election.
5. The City and Board moved forward as quickly as possible in order to comply with the gubernatorial mandate. The expedited process—which included obtaining authorization for the expenditure of approximately \$30 million and the coordination of personnel from eight City departments—required 16 months to complete from the point when the Procurement Department became engaged in February of 2018 through the final execution and conformance of the contract with ES&S. This does not include the subsequent work to implement the new voting system, described in detail in the Declaration of Joseph Lynch, which is beyond the role of the Procurement Department and takes place afterwards.

The Procurement Process for the City’s New Voting System

6. Voting systems concern the work of many City departments and require diverse expertise ranging from election-specific knowledge to technology to community engagement. As a result, the procurement of a new voting system for Philadelphia necessitated the involvement of at least eight City departments: the City Commissioners, the Procurement Department, the Office of Innovation and Technology (“OIT”), the Chief Administrative Office, the Office of the Director of Finance, City Council, the Law Department, and the Mayor’s Office.
7. The formal procurement process began in February 2018.
8. The City developed an “aggressive” timeline for the procurement process that would allow a new voting system to be procured in time for use in the November 2019 General Election.
9. An early step in this process was the preparation of a Request for Information (“RFI”). An RFI is a publicly issued request that provides respondents to that request with the opportunity to submit information to the City that may be relevant to the preparation of a Request for Proposals (“RFP”), which is the process through which vendors bid for the opportunity to obtain the contract with the City.

10. The RFI was issued on June 4, 2018, with responses due no later than July 17, 2018.
11. Once the responses to the RFI were received, they were reviewed and an RFP was drafted. Because the contract was to be awarded on a “Best Value” basis, a justification form was also provided as part of that process.
12. Concurrent with the RFI and RFP drafting processes, the City Commissioners and OIT visited and observed primary elections in Monongalia, West Virginia and St. Louis, Missouri in May and August 2018, respectively.
13. Once the Board had developed a draft RFP, the RFP had to be reviewed by the Procurement Department to ensure the appropriate terms and conditions were included.
14. Once the draft RFP was approved by Procurement, it needed to be approved by the Local Contract Opportunity Review Committee (LCORC). Because LCORC only meets once per month, RFPs must be submitted for review by the first Monday of the month.
15. The City posted the RFP publicly on November 30, 2018, with proposals due on December 28, 2018.
16. Proposals are reviewed by a selection committee governed by Procurement Department regulations and guidelines for Best Value RFPs. The selection committee must have diverse membership with a diversity of experience, with members chosen by each of the involved departments and approved by the Procurement Commissioner.
17. Upon receiving the proposals to the RFP, the Committee began reviewing them. Because the Selection Committee includes individuals from departments other than Procurement, the Committee’s first meeting generally consists of an overview of the review and scoring process as well as the confidentiality requirements. Committee members then individually review the proposals, and subsequent meetings are devoted to examining the contents of the proposals individually and considering the scores assigned by Committee members. Vendors whose proposals the Committee decides to move forward with are then invited to provide demonstrations to the Committee, after which Committee members can revise their scores. The Committee then meets again to further discuss the revised scores. At this point, the Committee may request best and final offers from the vendors, after which the Committee scores the proposals based on price. Finally, the Committee provides its joint scores and recommended proposal(s) to me.
18. Here, the Committee conferred multiple times a week to consider the responses, met at least 10 times, and, ultimately, on February 12, 2019, provided a recommendation to me that two of the proposals for voting machines were substantially similar.
19. At this point, I provided information to the Board of Elections so that the Board could determine which voting system and proposal should be selected for use in Philadelphia’s elections.
20. In addition to the procurement process required for the acquisition of a new voting system, the City also had to conduct – and continues to conduct – procurement processes

for storage and transportation of the system. These include temporary and permanent warehouse spaces to house the new equipment and a logistics contract for the delivery, set-up, and removal of the ES&S voting machines at the polling locations. Although the City had vendors that previously provided some of these services, the contracts had to be modified because of, among other things, the different maneuverability of the machines, the different ways the machines nest (or stack), their inability to withstand inclement weather or be carried over steps at scores of polling locations, and the number of trucks and staff needed to deliver the machines in time for an election.

21. Procurement and the Board also set up a pilot contract with the logistics company to complete a smaller trial delivery run with the new machines before an actual election where votes needed to be counted. The add-on to the logistics contract for the pilot alone required an additional three weeks to complete.

Purchasing a New Voting System Requires a Lengthy Process

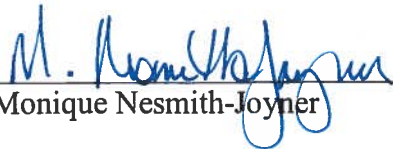
22. If the City's voting machines are decertified, the City may have to conduct all of the above procurement processes again. Because additional voting systems have been certified by the State since the Board's previous selection, and because of the comments the Board and City received during the process, the Board could not simply re-issue the same RFP. Instead, the RFP may need to be redrafted or even a revised RFI may need to be issued to seek additional information to craft such a revised RFP.
23. As with the prior procurement process, each of these procurement processes would need to comply with the processes mandated by the Philadelphia Home Rule Charter and Best Value Regulations, as well as other City processes such as LCORC.
24. In addition, additional appropriations from City Council might be required to procure a new voting system. That process would require: 1) a bill to be introduced by a member of Council; 2) scheduling of a public hearing before a committee of Council on the bill; 3) advertisement of the committee hearing for 5 days before the hearing; 4) holding of the public committee hearing, which may not be scheduled for weeks, and solicitation of public comment; 5) recommendation of the bill out of committee to Council; 6) printing of the bill as amended; 7) first reading of the bill in City Council; 8) second reading of the bill in City Council and final passage at least a week later; and 8) approval of the Mayor within two weeks, or disapproval within two weeks, returning of the disapproved bill to Council, and another vote where the bill passes with a 2/3 majority within another seven days. The process can be lengthened based on how long it takes to gain the support of Councilmembers.
25. Procurement estimates that approximately 5 to 7 additional weeks would be required to get a bill through City Council, plus up to 2 additional weeks for mayoral enactment. This time could be longer depending on the complexity of the ordinance and the level of political interest.

26. In addition, the Board of Elections would also have to approve the use of any new voting machines for elections in Philadelphia before a contract could be awarded and the final contract negotiation and conformance process could begin.
27. Furthermore, the logistics contract for the delivery, set-up, and removal of the new system could require a substantial amount of time, as the previous negotiations required an additional 8 weeks from the point that Procurement became engaged and required the involvement of the Law Department, Finance, Risk Management, among others, to complete.
28. Should another trial delivery run be required, that could add another three weeks to the process.
29. During 2019, the City employed as rigorous a process as possible under strict time constraints, which still took 16 months. However, that process still came under the scrutiny of the City Controller and the public for proceeding too quickly. Given this, the City would have to consider including time for additional public testing and commentary were it to have to conduct a new voting machine purchase process. As a result, I expect the entire procurement process for a new voting system would take 18 to 24 months at a minimum.

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I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct, based upon my own knowledge and/or belief.

DATE: December 12, 2019



Monique Nesmith-Joyner